

SENATOR MURPHY: Senator Luedtke, I think under 84-202 relating to the powers of the Attorney General, it is stated in there that the Attorney General may in situations such as this where there is a conflict employ counsel to act in his stead under the powers of his office.

SENATOR LUEDTKE: Or he could tell the agency to employ counsel, isn't that correct?

SENATOR MURPHY: I am quite sure he could, yes, sir, but I think he would remove himself from defending in view of the fact that he had issued a contrary opinion.

SENATOR LUEDTKE: I just want to clarify that for the record. Thank you.

SENATOR MURPHY: Yes, thank you.

PRESIDENT: Senator Cullan.

SENATOR CULLAN: Mr. President, members of the Legislature, I would also like to ask Senator Murphy a question if I might.

SENATOR MURPHY: Yes, sir.

SENATOR CULLAN: Senator Murphy, I am a little curious as to how this thing is actually going to work. How many state agencies we are going to have in the court system continually trying to test the constitutionality of something. Do you think that they will be with this law overly cautious and perhaps we will have our state agencies in the courts testing things perhaps more often than they should be?

SENATOR MURPHY: I would raise the issue, Senator Cullan, we are projecting something that is not certain but I would doubt it very much. The only occasion they would have to be in court would be if, let me cite an example. We passed, the only water law that we have is 577 and we are all very proud that that law exists on the books of this state and I would remind you that the Attorney General has held that law to be unconstitutional yet we are happily implementing that law. Any agency would have the right to do so at their own risk as it is specifically stated in statute but the only position I want to bring is that of an agency that is hiding behind an Attorney General's opinion which establishes nothing other than a possibility, and if you look at the times that he has held things unconstitutional that have been set down. The malpractice he said was unconstitutional. The court upheld it. The speed limit he said was unconstitutional. The court upheld it. The man is not infallible and I do not fault him for it. Our laws are confusing at the very best but the thing I do not want is what is happening today in this state, that we have laws that have been on these books one year, two years, three years. They are not being implemented. The nurses were here and said when are you going to implement our law and the agency said, well, we are busy right now. Senator George goes to the Highway Department and says, when are you going to implement our law. Well, we are busy today. I go to the Department of Education. Well, we don't think it is constitutional. We are not going to do it. Our statutes are very explicit, and if they were not, we would be in a most unfortunate circumstance in